

Revised Service Date: August 19, 1983

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Montana) UTILITY DIVISION
Public Service Commission's In-)
vestigation of the Montana Power) DOCKET NO. 82.3.9
Company's Reorganization as a)
Holding Company.) PROPOSED ORDER NO. 5011

APPEARANCES

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BACKGROUND

1. On February 24, 1982, the Montana Power Company (Company, PC), through its Chief Executive Officer, Joseph A. McElwain, informed the Montana Public Service Commission that the Company intended to seek approval of its shareholders to establish a holding company to be called Montana Energy. The issue under MPC's plan, would be presented to shareholders at the Company's annual meeting in May, 1982. According to Mr. McElwain, the Company made this decision at its Board of Directors' meeting held February 23, 1982.

2. On March 1, 1982, the Commission unanimously voted to institute an investigation in order to examine the actual and potential effects of the proposed reorganization. An Order Initiating Investigation was issued on that date and it outlined the issues and concerns that precipitated the investigation.

3. On March 23, 1982, a prehearing conference was held and dates for discovery, testimony and the hearing were established.

4. Hearings in this docket were held November 16 and 17, 1982, pursuant to proper notice.

SUMMARY OF TESTIMONY

5. Prefiled testimony was submitted by MPC. It included testimony sponsored by John J. Burke, Executive Vice President for Consumer, Government and Public Affairs; Frank V. Woy, Vice President and Treasurer (now Executive Vice President, Finance); Marvin Liebermann, former Chairman of the Illinois Commerce Commission and currently a consultant.

6. Burke appeared as the Company's policy witness and outlined the general basis for the Company's decision to reorganize as a holding company. Mr. Burke also addressed the issues posed in the Commission's order initiating this Docket.

7. In his testimony, Burke reviewed the Company's history as a diversified operation, that is, a company that has been involved in both utility and nonutility operations. In speaking to the nonutility functions, Burke stated, "Performed under recognized and appropriate allocations of time and investment, these nonutility functions served to lessen utility expenses while keeping highly experienced personnel available for service to the utility on a less costly basis than would be true if the enterprise was strictly that of a utility." (MPC Exh. 2, Burke, p. 6)

8. Burke further testified in prefiled testimony that recent events "convinced management that a more distinct line separating the utility and non-utility enterprises would be beneficial to everyone concerned with the Montana Power Company. " (Id.) In elaborating on the statement, Burke cited, "pervasive scrutiny of the utility operations," "appropriate deployment of manpower and capital in the growing non-utility enterprises, " and "questions of whether managers can

effectively pursue diverse goals while still discharging divergent responsibilities." (Supra, pp. 6, 7). Based on its analysis, Burke concluded that it was MPC's judgment that employees will enjoy greater success if their goals are fully delineated and ambiguous responsibilities are removed." (Supra, p. 7)

9. According to Burke, "The holding company arrangement ultimately ~ should allow the sharpest degree of separation of the various businesses."
(Id.)

10. Burke concluded his testimony as to the benefits of reorganization with the statement, "Although it may sound vague, it is our belief that the concentration of efforts that will follow from this arrangement should ensure continued high efficiency and a proper return on the capital investment in the various lines of endeavor pursued by the Company." (Id.)

11. Burke's testimony also summarized the mechanics involved in consummating the reorganization, and discussed the issues considered by the Company in considering how it would pursue implementation, noting, "the Company's reorganization program is necessarily dynamic and we are in the very preliminary stages. irrevocable decisions have not been made regarding appropriate policies and procedures for an operating format to govern the holding company." (Supra, p. 8) One element of its implementation considerations is that a "service company approach . . . could be ineffective simply because of possible regulatory skepticism and unnecessarily complicated regulatory activity." (Supra, p. 9) According to this testimony, the holding company's "principal

function will be the public link with shareholders investing in the common equity of the consolidated enterprises." (Id.)

12. According to Burke, Montana Energy and MPC will have identical Boards of Directors. (Supra, p. 10) On cross-examination, Burke stated that Montana Energy will own and control MPC. (tr.. p. 61) Boards of the other companies will be the same but may, over time, be made up of individuals particularly familiar with particular businesses. (ld.)

13. In testimony regarding the potential impact on the Commission's jurisdiction and effect on ratepayers, Burke testified-that there would be no change in the Commission's jurisdictional reach and that any ratepayer effect would be positive. (Supra, p. 11)

14. As to the mechanics of transferring what are now MPC subsidiaries to Montana Energy, Burke stated that all transfers "must be made with a sensitive appreciation of effects on the utility's capital structure. We will not act precipitously or make wholesale transfers which could affect transfers which could affect the utility's credit standing or distort its capital ratios." (Supra, pp. 11-12) Regard for balance sheet and financing effects will be important elements in considering transfers . (Supra, p . 12) However, on cross-examination, Burke stated that he knew of no impediment except this proceeding which would prevent an immediate transfer of nonutility subsidiaries to Montana Energy. (Tr.. pp. 161, 162)

15. Burke found the Commission's access to records relating to inter affiliate transactions or transactions between Montana

Energy and MPC to be unaffected by the reorganization because of the Commission's rate making functions and because of reports the Company would file with the Securities and Exchange Commission. (Supra, pp. 11, 12)

16. Burke further concluded that the Commission has no jurisdiction over nonutility property "except to the extent it affects utility rates or conditions of service." (Supra, p. 13)

17. In the last three pages of his testimony, Burke addressed the questions posed by the Commission's order in the following fashion:

1) Montana Energy will not be a public utility, since it will own no utility assets, nor will it provide utility services.

2) The Commission cannot supervise changes in organization or ownership of public utilities.

3) There are no detriments to anyone with reorganization.

18. On cross-examination, Burke noted that there was not a great deal of allocation of employees' time between utility and nonutility activities. (Tr.. p. 48) Nonetheless, he concluded all employees would benefit from the more distinct line between utility and nonutility afforded by the reorganization. (Tr.. p. 49) And yet, in referring to his prefled testimony, Burke stated that he did not believe any employee had ambiguous responsibilities under the current organization. (Tr.. p. 52)

19. On cross-examination, Burke supplemented his answers as to

why the Company decided to reorganize: 1) enhanced stock marketability of stock because of investor expectations; 2) increasing diversification; and 3) regulatory skepticism.

20. Burke was cross-examined on the issue of whether Montana Energy's stock issuances would be subject to Commission approval, and stated that they would not be.

21. On cross-examination, Burke discussed the possibility of increased risk if the nonutility investment were to double. He stated, "If we continue to do it [diversify] the way we have over the last 20 to 30 years, I think it would enhance the value of common equity. If it were done recklessly and without due regard for the enterprise that we are operating, it could increase the risk, and if the risk were increased, and if the earnings were subjected to some uncertainty, that could increase the cost of common equity, but we intend that not happen." (Tr. p. 103)

22. In response to questions about the extent of the Commission's jurisdiction, Burke stated that the Commission does not have jurisdiction to determine if new natural gas discoveries should be assigned utility status or nonutility status.

23. In discussing the timing of the spin off of current MPC subsidiaries to Montana Energy, Burke stated on cross-examination, "the careful step by step approach is the preferable way for us to go. Once the holding company is formed and all of the transfers are made, it would be difficult to unscramble that egg, so to speak. Once it's done, it's done, and it will remain that way, so rather than err by moving too rapidly. . . I think our deliberation says, let's proceed carefully and cautiously . .

. to be absolutely certain that everything we do is done in a way so that it does not adversely affect our public utility responsibilities, because I think it's fairly evident, and nobody is challenging the fact that this principal business is, was and probably will be for an awfully long time in the future the providing of public utility services in Montana." (Tr. p. 161)

24. Frank V. Woy addressed the accounting and financial implications of the proposed reorganization (MPC Exh. 2, Woy, p . 2), and was referred to by Burke several times as the expert in the area.

25. Woy concluded in prefiled testimony that financial and accounting information previously available will not be "clouded or obscured" by reorganization, that credit underlying MPC's outstanding securities "should not be materially reduced" with reorganization and that reorganization "will not adversely affect the ratepayer. " (Supra, p . 3) On cross-examination, Woy stated that transfers of MPC's subsidiary stock will affect the debt coverage of MPC (Tr. p. 190).

26. In response to a question regarding actual transfer of subsidiaries from MPC to Montana Energy, Woy stated, "To some extent, the earnings of the subsidiary companies contribute to the credit standing of Montana Power. As a result, the transfer of ownership of the nonutility subsidiaries to Energy must be accomplished with consideration of the need to protect preferred and debt security holders of the Montana Power Company. This consideration is one factor in development of our plan to stage these ownership changes over a period of time. The careful timing of transfers is designed to assure that implementing the

reorganization will not adversely affect Montana Power is credit standing. (Supra, p. 6)

27. In Woy's opinion, with reorganization, the Commission could use Montana Energy's common stock in determining MPC's cost of equity capital. (Id.)

28. Woy also testified that MPC's utility accounting practices would not: be "materially affected" by the reorganization. (Id.)

29. On cross-examination, Woy testified that, as sole common equity shareholder, Montana Energy, would dictate who sits on MPC's Board of Directors. (Tr. p. 190)

30. In contrast to Burke's testimony, Woy stated that from a financial viewpoint, the Company could not transfer all subsidiaries from MPC to Montana Energy because subsidiary earnings contribute to financial coverages of fixed charges and capitalization, and have been relied on by purchases of MPC's long-term debt securities and preferred stock securities. (Tr. p. 202) Thus, transfers could dilute credit that underlies MPC's securities. Although MPC is aware of that potential, detailed timetables have not been outlined because of the Commission's order instituting this docket. (Tr. p. 204) Woy stated that MPC's coverages are under "enormous pressure at the moment." (Tr. p. 206)

31. According to Woy, reorganizations such as is proposed by MPC "always prompts a lot of questions in people's minds, and particularly, I would guess, with utility analysts who are charged with the responsibility of recommending or not

recommending the company's stock as an investment to investors. " (Tr. p. 207) Concerns of the investing community include the period over which the reorganization will take place and whether it will be done right.

32. Woy agreed with the Commission staff that, implicit in the Company's assurance that reorganization would not adversely affect ratepayers, is the assumption that it will be done correctly in terms of timing and planning. (Tr. p. 213)

33. According to Woy, who consults extensively with financial analysts and advisors, these individuals perceive that reorganization would insulate nonutility operations from regulatory scrutiny. (Tr. p. 210) Investors and analysts believe that reorganization will help assure that utility operations are being judged on their own and are not being subsidized by nonutility operations. (Tr. p. 229)

34. One reason for reorganizing that has been frequently mentioned by Company spokesmen is that it will help convince investors that MPC is more than just a regulated utility. (Tr. p. 289) On the other hand, there have also been statements that MPC's diversified activity is already acknowledged by the investor community. (Tr. pp. 208, 307)

35. Woy stated that he had not allocated any of his time to the proposed reorganization because he hadn't spent much time on the endeavor. (Tr. p. 325)

36. Woy testified that he did not know what the Commission would do if Montana Energy wished to inject more equity capital into

the utility, contrary to the wishes of the Commission. (Tr. pp. 309, 310)

37. Marvin S. Lieberman submitted testimony as to the effect of the proposed reorganization on the Company. (MPC Exh. 2, Lieberman, p. 3)

38. Lieberman's testimony included a summary of rate making practices and a summary of diversification activities in the regulated utility industry, and noted that one reason for the activity is to increase returns in "areas experiencing higher rates of growth than the regulated utility areas. " (Supra, p. 7) Lieberman noted that if diversification investments "stray into unassociated areas, the risk of failure may increase. (Id.) He further noted however, that concern about recent diversification activities by utilities had little relevance for MPC because of its substantial history of diversified activity. (Supra, p. 8) However, on cross-examination, Lieberman acknowledged that, were the Company to substantially increase its nonutility investments or strike out into new areas, concerns about diversification expressed in the literature relating to utility diversification would be valid. (Tr. pp. 254, 255)

39. In his prefiled testimony, Lieberman stated, "the only change resulting from the merger is that the present shareholders of Montana Power Company will become, on a share for share basis, shareholders of Montana Energy Corporation, which will own Montana Power." (Supra, p. 11)

40. Lieberman further testified that reorganization "should not have an effect upon rates and services, and that it will, in

fact, enhance regulation by better separating utility and non-utility operations and that the Commission will be able to adequately monitor interaffiliate transactions. " (Supra, pp. 11, 12) Lieberman, in fact, testified that reorganization will enhance the Commission's ability to review MPC's utility operations, emphasizing the Commission's authority to set rates. (Supra, pp. 13, 14)

41. Lieberman testified that the reorganization would not affect MPC's cost of capital in the long run, although it might in the short term. (Id.) On balance, however, Lieberman concluded that reorganization will increase investor confidence and will have no long range and little short term effect on the cost of equity. (Supra, p. 14)

42. On cross-examination, Lieberman stated that the holding company form would allow subsidiary independence, specifically in the development of capital budgets, an independence not possible when the parent is a public utility. (Tr. p. 239)

43. In discussions about Western Energy, Lieberman stated that it would eventually be spun off and would then report to Montana Energy. (Tr. p. 239)

44. In discussing a reorganization similar to that proposed by MPC, which was accomplished by an Illinois utility, Lieberman stated that the holding company form had facilitated a later spin off of nonutility assets without regulatory approval. Such approval would have been necessary had the holding company not been formed. (Tr. p. 243)

45. In contrast to Woy's testimony, Lieberman believes that ratepayers would receive a positive benefit from the reorganization. (Tr. p. 244)

46. Lieberman also disagreed with Woy's opinion that Montana Energy's cost of capital could be used in determining MPC's cost of capital. (Tr. p. 245) He stated that in similar situations, the Illinois Commission had used "comparable companies, " an admittedly difficult hypothetical situation. (Tr. p. 248)

47. Lieberman also addressed the issue of the proper regulatory approach if Montana Energy engaged in risky nonutility ventures that failed, thereby threatening the parent's ability to attract capital. (Tr. pp. 246, 247) He rejected the possibility of ratepayer impact, based on his belief that the ratepayers could not be forced to "pick up the tab because of unsuccessful nonutility ventures. (Tr. pp. 247, 248) He concluded that there must be "some creative regulative solution" to the situation that would allow continued adequate service. (Tr. p. 248) However, when asked for such a solution, he failed to offer one.

48. Lieberman acknowledged that a holding company might be tempted to divert capital from the utility operations to nonutility operations that earn a higher return than would be authorized for the utility. (Tr. p. 250) However, he thought that the problem could be solved via the Commission's authority over rates and conditions of service. (Tr. 250) In comparing precisely this situation, which occurred with the Milwaukee Railroad, Lieberman found that the distinction was a lack of state control with the Railroad.

49. Under questioning, Lieberman acknowledged, with

qualifications, that the state regulatory leverage depended on the degree to which the holding company would be dependent on its utility earnings (Tr. p. 251). One of Lieberman's qualifications was that Company employees have a dedication to the "utility side" and would, because of that, not blindly follow the highest profit operations in investment and operations decisions. (Tr. pp. 252, 253)

50. In response to a question about the Commission's continued access to records it can now examine, Lieberman stated that "there is a question" whether that access would continue under the holding company structure. However, he dismissed that legal uncertainty as irrelevant in view of the Company's promises that records access would remain as it is under the present form of organization. (Tr. p. 255)

51. In response to questions regarding increased scrutiny by the SEC under the holding company form, Lieberman stated that the SEC's scrutiny "is really very minimal." (Tr. p. 260)

52. The Montana Consumer Counsel did not sponsor any witnesses but did cross-examine those sponsored by the Company.

53. Several members of the public presented testimony at the hearing.

54. Charles A. Banderob, President of the Montana Senior Citizens' stated that the majority of consumers "hold considerable fear of the Montana Power Company's proposal to form a holding company" because of past experience with the Company. Banderob also challenged the fairness of the hearing in the absence of expert witnesses sponsored by the Consumer Counsel and

asked that the Commission declare the proceeding a "miscarriage of justice." (Tr. p. 6) He then read a magazine article that reviewed some of the abuses that have occurred in the electric industry under the holding company structure, passage of the Public Utility Holding Company Act and current attempts to amend or repeal the Act.

55. Pam Campbell testified on behalf of the Butte Community Union and expressed concern that formation of the holding company could cause a loss of jobs in Butte. (Tr. p. 14) The Company subsequently gave assurances that reorganization would not affect the number of MPC jobs in Butte.

56. Sam Ryan, representing the Montana Senior Citizen's Association reiterated Banderob's concern about the lack of witnesses representing consumer interests, likening it to sending a lamb to a lion's den and calling the hearing "ill advised". (Tr. p. 16) He went on to read letters of members of his Association that expressed concern about increasing utility bills. A letter from Elsie Fox, Miles City, stated that in these times of rising energy costs it is important that citizens be assured that rate requests are subject to thorough scrutiny. Without that scrutiny, Fox went on to state that suspicion and distrust would increase.

57. Robert D. Virts, also representing the Montana Senior Citizen's Association, spoke to the history of holding companies in the railroad industry. In his opinion, that corporate form had led to diversion of railroad earnings into nonrailroad investments. (Tr. p. 18) He tied reduced service by Burlington Northern to its reorganization into a holding company. Virts also

expressed his opinion that if the Commission were not given access to corporate records, the results would be very detrimental to senior citizens. (Tr. p. 20)

58. J.T. (Tom) Ryan, also representing the Montana Senior Citizen's Association, discussed the history of holding companies in the utility industry, noting, "Holding companies produce nothing; they pyramid stock ownership of numerous subsidiaries into few hands." (Tr. p. 54)

DISCUSSION AND ANALYSIS

59. As the Commission understands (although does not necessarily accept) the reasons behind MPC's proposed reorganization, they include a desire to more clearly convey to investors the fact that MPC (or Montana Energy) is a diversified company; to provide financial flexibility that is not available to an organization with a utility parent; to lessen regulatory skepticism about possible subsidies flowing from the utility operations to the non-utility operations; to provide more separate identities for those corporations that are now MPC's subsidiaries.

60. The Commission's concerns regarding the proposed reorganization have to a large extent, been explained in the order instituting this docket and in the documents filed in the various lawsuits associated with this case. Testimony presented in this case have raised additional concerns not previously identified. These include, but are not limited to the fact that transfer of Western Energy at this time would seriously affect MPC's debt coverage; testimony fails to suggest that the Company has developed any firm plan as to how reorganization would

proceed; the Company's chief financial officer has not devoted what he considers a substantial amount of time to the financial ramifications of reorganization¹; the Commission would lose all current statutory authority over the utility's issuance of stock, since Montana Energy would issue all stock.

61. The analogy to railroad reorganizations is too relevant and the experiences are too recent to ignore. As Woy summarized, when the proposed reorganization was announced, investors had a lot of questions, primary of which was "Will it be done right?" The Commission and Montana's ratepayers have the same question, but it extends not only to the present but into the future; unlike investors, ratepayers cannot decide that management is not doing it right, sell out and dispose of their concern with the Company. Both the Commission and the ratepayers must live with the Company, whether its management decisions be for good or ill. By saying that, the Commission in :

¹ This is entirely understandable from a management viewpoint, since there will be no effect unless management acts; however, from a regulatory viewpoint, it leaves great uncertainty as to what the actual effects will or might be.

no way means to suggest that present management wants to or is willing to sacrifice the ratepayers' interests. By the same token, the Commission recognizes that management has a responsibility to shareholders that, especially in the railroad area, has seemed to work to the detriment of ratepayers, as management philosophy shifts from a service orientation to a more purely profit orientation.

62. All of these concerns are valid only if the question of whether Montana Energy would be a public utility is answered in the negative. As outlined in this proposed order's conclusions of law, the Commission's conclusion is that Montana Energy, under both statutory and case law, is a public utility. Because of that conclusion, and because of the proposed solution contained in this order, those concerns about the proposed reorganization will not be discussed in detail at this time

63. Because of the conclusion that Montana Energy would be a public utility under Montana law, the Commission's concerns are academic: The so-called reorganization is, in fact, merely a change in name. The Montana Power Company becomes Montana Energy.

64. Although this conclusion could spell the conclusion of this order, the Commission, at least to some degree, shares the concerns that are part of the Company's proposal. Most specifically, in a number of past rate cases, the issue of allocation between utility and nonutility operations has been a concern. From the Commission's view, that concern has centered on whether ratepayers have been or are subsidizing

nonutility operations. (By contrast, one of MPC's concerns seems to be that investors have, perhaps, perceived subsidies flowing in the opposite direction.) As a related concern, the Commission, given the railroad examples presented by public witnesses and found to be a valid analogy based on the Commission's own experience in the area, is concerned that the relatively stable earnings of the utility (at least in recent times) might be siphoned off to nonutility operations that hold at least the promise of higher (if speculative) returns.

65. Given concerns that coincide, at least in part, the Commission finds that a flexible approach that seeks to address the diverse interests put forth in this docket, is worth serious discussion.

66. The proposal set out below is intended to serve as the basis for a frank exchange of ideas, with the goal being to reach, if possible, a solution. The Commission is aware that uncertainties caused by this investigation have concerned both the Company and its investors. That was not the intent, but was, in the Commission's view, a necessary result of statutorily required regulatory scrutiny. To the degree possible, by this order, the Commission seeks to find a solution to the issues raised by the proposed reorganization that is either neutral to or beneficial to the Company, its ratepayers and its investors.

67. It is in this spirit that the Commission decided to make its preliminary thoughts known through a proposed order rather than a final order, although this avenue is not required by or even specifically contemplated by Montana law.

68. Based on the record in this case, the Commission's concerns, and the Commission's own expertise in the area of utility and railroad reorganizations, it seems that all concerns might be addressed by a reorganization that completely separates the Company's utility operations from its nonutility operations. That is, MPC's activities that have no role in providing utility gas or electric service to Montana's ratepayers would become a separate corporation. The Montana Power Company, after this reorganization, would consist of those operations and that plant which are directly related to providing natural gas and electric services, as contemplated by Montana's utility law.

69. In order to effectuate this complete separation, it would be necessary for the Company, interested parties and the Commission to very closely examine, once and for all, the appropriate allocations between utility, and nonutility investments. Most critical would be a separation by function, of utility and nonutility natural gas supplies and electricity supplies. On the gas side, a final determination would have to be made as to the appropriate accounting treatment for gas properties once placed in utility accounts and subsequently transferred to nonutility accounts. On the electric side, the Commission considers it very important to separate coal investments into utility and nonutility categories, although all coal reserves are presently classified as nonutility operations. As suggested in Order No. 4938a in Docket No. 82.8. 54, it is the Commission's preliminary conclusion that coal reserves dedicated to or intended for use in the utility's coal fired generating plants must very seriously be considered for potential inclusion in the utility corporation. In addition to laying to rest the long-standing argument about how coal costs should be treated for rate making purposes, this

allocation would also address the Commission's stated concern regarding the possible interruption of coal supplies to generating plants upon which Montana's ratepayers depend. (See this docket, Order Initiating Investigation.)

70. The Commission is fully cognizant that this proposal presents a number of questions, challenges, and implementation possibilities if accepted by interested parties, with or without suggested changes. Given these uncertainties, the Commission encourages and invites suggestions, full discussions of real or potential problems, and proposed timetables if deemed appropriate. The Commission, in view of the record presented, is especially cognizant of the importance of the latter element, i.e., timing. The Commission in no way wishes to jeopardize the financial health of MPC, and thus the quality and cost of utility service as it exists today, nor does it wish to precipitate formation of financially weak corporations. It is the Commission's belief, however, that this proposal might alleviate the concerns of all parties. If such is not the case, it will be altered in the final order in this docket to address those concerns to the maximum extent possible.

71. The Commission believes that it has a responsibility to assure that, to the maximum extent possible, none of its actions, or actions taken by a regulated utility today, in any way threaten the reasonableness of present or future rates or the adequacy of present or future service. By its generally straightforward testimony in this case, MPC has acknowledged that there are serious issues involved in its proposed reorganization. By this order, the Commission has attempted to address those issues.

CONCLUSIONS OF LAW

1. The Montana Power Company furnishes electric service to consumers in Montana, and is a "public utility" under the regulatory jurisdiction of the Montana Public Service Commission. 69-3-101, MCA.

2. The Commission properly exercises jurisdiction over MPC's rates and operations. 69-3-102, 69-3-106, 69-3-201, 69-3-324, MCA.

3. The Commission has provided adequate public notice of all proceedings and opportunity to be heard to all interested parties in this Docket. Title 2, Chapter 4, MCA.

4. If MPC carried out its reorganization, Montana Energy would be a public utility under Montana law. Section 69-3-101, MCA, defines the term:

69-3-101. (Temporary) Meaning of term "public utility". The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

- (1) heat;
- (2) street-railway service;

- (3) light;
- (4) power in any form or by any agency;
- (5) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;
- (6) telegraph or telephone service.

The Montana Supreme Court had occasion to interpret this statute in Gallatin Natural Gas Co. v. Public Service Commission, 79 Mont. 269 (1927) . Under that case, a holding company will be considered a public utility when the holding company exercises control over a corporation that provides public utility services:

. . . Gallatin Natural Gas Company owns and controls the Billings Gas Company and, through it, owns, controls and operates the plant and equipment of the latter company, within the state of Montana, for the delivery and furnishing, to and for other persons, of natural gas for heat, light or power. The Billings Gas Company is the creature of the Gallatin Natural Gas Company; one of its assets, functions, instrumentalities. When the Billings Gas Company furnishes natural gas to consumers, it is the Gallatin Natural Gas Company, under another name, which is furnishing it.

79 Mont. at 282

The record in this case demonstrates that the relationship between Montana Energy and MPC would be the same as that which prompted the Court to find that Gallatin Natural Gas Company was a public utility. (Finding of Fact Nos. 12, 29)

5. Provisions of the Montana Administrative Procedures Act governing proposed orders (24-621, MCA) are not applicable to this order, since a quorum of Commissioners heard the case.

6. The Commission has jurisdiction over nonutility property to the extent that it affects utility rates or conditions of utility service. (MPC Exh. 2, Burke, p . 13; 69-3-201, MCA)

ORDER

[Because of the purpose of this order, an ordering paragraph on the merits will not be issued until the final order.]

Parties have 30 days from the service date of this order to file comments, exceptions and proposals for the Commission's consideration for its final order.

DONE AND DATED this 12th day of August, 1983, by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

THOMAS J. SCHNEIDER, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

CLYDE JARVIS, Commissioner

ATTEST:

Madeline L. Cottrill
Secretary

(SEAL)